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Federal Communications Commission  
Office of the Secretary

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	

**PETITION FOR WAIVER OF BIG BEND TELEPHONE COMPANY, INC.**

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February 6, 2012

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**REDACTED—FOR PUBLIC INSPECTION**

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**PETITION FOR WAIVER OF BIG BEND TELEPHONE COMPANY, INC.**

**I. INTRODUCTION AND SUMMARY**

Big Bend Telephone Company, Inc. (“BBTC” or the “Company”) respectfully requests that, pursuant to Section 1.3 of its rules, the Commission waive three of its existing and planned rules regarding the distribution of universal service support as applied to the Company.<sup>1</sup> Specifically, BBTC requests that the Commission waive (i) its \$250 per line monthly cap on

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<sup>1</sup> 47 C.F.R. § 1.3.

High Cost Loop Support (“HCLS”);<sup>2</sup> (ii) its updated and extended limits on recovery of corporate operations expenses applied to HCLS and Interstate Common Line Support (“ICLS”);<sup>3</sup> and (iii) its planned application of a regression analysis to limit reimbursable capital and operating expenses for HCLS.<sup>4</sup>

The Commission anticipated that certain rate-of-return carriers would require waiver of its Universal Service Fund (“USF”) rules in circumstances when such rules reduced a carrier’s support to a point that it “would not be ‘sufficient to achieve the purposes of [section 254] of the Act.’”<sup>5</sup> BBTC is such a carrier, and this waiver petition presents the very circumstances envisioned by the Commission; absent a waiver and the continuation of existing federal universal service funding most, if not all, communication services in West Texas would go dark. BBTC’s large, low-density, mountainous service area contains 17,593 square miles, including approximately 485 miles or 25 percent of the U.S.-Mexico land border. The territory’s sheer size and rugged terrain present unique challenges to deploying and maintaining a communications network, including higher construction costs to deploy facilities in rocky, mountainous terrain and higher maintenance costs due to poor road infrastructure, extreme weather, and the long distances required to reach different parts of the network for repairs.

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<sup>2</sup> *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161, Appendix A, Section 54.302 (rel. Nov. 18, 2011) (“*USF Transformation Order*”).

<sup>3</sup> *Id.* ¶¶ 227-33, Appendix A, Section 36.621(a)(4).

<sup>4</sup> *Id.* ¶ 210-26.

<sup>5</sup> *Id.* ¶ 540.



In addition, the Company's unique location adds costs because BBTC must deploy and maintain a higher level of network redundancy and resiliency than a company of its size and scale would ordinarily need in order to meet the needs of the many federal and state institutions tasked with securing the border, including the U.S. Border Patrol, the Department of Homeland Security, and the Department of Immigration, Customs, and Enforcement. Additionally, BBTC's employees must be trained to handle the prioritization of network repairs for such institutions under the FCC's Telecommunications Service Priority system.<sup>6</sup>

BBTC has overcome these geographic and national security challenges through an innovative and cost-effective combination of wireline, wireless and satellite solutions. And even with the additional challenge of serving an economically disadvantaged customer base, BBTC's network investment and expansion have allowed the Company—unlike most local exchange carriers—to add 27 percent more access lines since 1997. At the same time, BBTC has proactively taken measures to improve its efficiency by sharing additional responsibilities among its lean staff, trimming employee benefits, and searching out new and more efficient technological solutions to solve its network challenges.

Despite its efforts to operate more efficiently, the very high costs of serving BBTC's territory remain significant—costs that BBTC will be unable to recover by virtue of the Commission's new USF rules. The anticipated reduction of universal service support to BBTC is projected to cause the Company to default on its loan covenants by 2013 and cause the Company and its affiliates to be out of cash by January 2016. Under these projected universal

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<sup>6</sup> See 47 C.F.R. Part 64, Appendix A.

service fund limitations, bankruptcy would be inevitable. These circumstances would most certainly “put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service.”<sup>7</sup> Indeed, as BBTC is the only terrestrial voice and broadband provider that covers its entire service area, consumers will be at risk of losing access to both voice and broadband services. And beyond BBTC’s customers, all consumers in the territory will be at risk of losing service or experiencing degraded service because *all* alternative providers of terrestrial voice and broadband services in the territory rely exclusively on BBTC for transport to provide services. Moreover, the effect of the new USF rules on the Company would also threaten national security by jeopardizing the ability of numerous federal and state border security institutions to access critical communications services and infrastructure from BBTC. Finally, schools and libraries throughout the region would have their communication services disrupted. For these reasons, the Commission should grant the requested waiver.

## **II. STATEMENT OF FACTS**

For the last fifty years, BBTC has served a very remote area with challenging mountainous and desert terrain situated along the U.S.-Mexico border in the Trans-Pecos region of West Texas.<sup>8</sup> In addition to facing very high costs resulting from deploying and maintaining a telecommunications and broadband network in an area with challenging terrain, BBTC serves a geographic area larger than the state of Massachusetts with 0.3 customers per square mile. In

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<sup>7</sup> See *USF Transformation Order*, ¶ 540.

<sup>8</sup> BBTC is a rural incumbent local exchange company and is wholly owned by its parent Nevill Holdings. Nevill Holdings also owns Big Bend Telecom, a nonregulated affiliate that provides services to locations outside the BBTC study area.

addition, BBTC faces the challenge of serving a socioeconomically-disadvantaged customer base. The counties in BBTC's service area generally fall below the national average median income, and in some cases, have a greater than average percentage of people living under the federal poverty threshold.<sup>9</sup> Even in the more densely populated county of Presidio, which contains the sole incorporated town in BBTC's service area, the average household median income is half the national average.<sup>10</sup> Approximately 20 percent of BBTC's residential lines are Lifeline lines. Moreover, much of BBTC's service area is majority Latino—Presidio, Crockett, Pecos, Reeves, and Val Verde counties are all 60-80 percent Latino. Commission data show that Latinos continue to have lower telephone and broadband subscribership rates than most other ethnic groups.<sup>11</sup> As a result, the income and cultural characteristics of the population that BBTC serves further constrains the Company's ability to recoup costs through higher rates and through nonregulated services.

In this challenging environment, BBTC has provided reliable voice and broadband services in the most efficient and cost-effective way possible. BBTC has deployed a copper and fiber wireline network that contains [REDACTED] of

<sup>9</sup> See Brewster, Crockett, Jeff Davis, Pecos, Reeves, Terrell, and Val Verde Counties. U.S. Census Bureau, State & County QuickFacts, <http://quickfacts.census.gov/qfd/states/48/48377.html> (last revised Dec. 23, 2011).

<sup>10</sup> The median income in Presidio County is \$28,636 compared with the national average median income of \$50,221. U.S. Census Bureau, State & County QuickFacts, Presidio County, Texas, <http://quickfacts.census.gov/qfd/states/48/48377.html> (last revised Dec. 23, 2011).

<sup>11</sup> *Universal Service Monitoring Report*, CC Docket No. 98-202 at Table 3.5 (rel. Dec. 2011) at <http://transition.fcc.gov/wcb/iatd/recent.html> (showing that telephone subscribership rates for Latinos were 92.6 percent compared with 95.6 percent nationwide); *Connecting America: The National Broadband Plan*, Exhibit 3-1 available at <http://www.broadband.gov/download-plan/> (showing that broadband adoption rates were 49 percent for Latinos compared with 59 percent for African Americans and 69 percent for Whites).

backbone infrastructure, not including mileage to the home. This wireline network connects to [REDACTED]. These fiber-fed nodes serve approximately [REDACTED] customers. To provide voice service to the remaining [REDACTED] customers, BBTC found that it was cost-prohibitive to expand its wireline infrastructure any farther: Estimates procured in 1994 showed that extending a traditional wireline network to reach its remote customers would cost more than [REDACTED]—an amount today when adjusted for inflation that would be significantly higher. To meet its Texas carrier of last resort (“COLR”) obligations to provide a transmission speed of at least 14.4 kbps on all switched voice circuits for its remote customers,<sup>12</sup> BBTC invested in satellite segment technology which uses satellite segment bandwidth in the local loop for voice and broadband.<sup>13</sup> BBTC engaged with satellite company, X2nSat, to develop an innovative solution that integrates satellite technology to provide local loop to remote customers and to connect them to the remainder of BBTC’s network through a satellite integration box. This serves approximately [REDACTED] customers that are beyond the reach of BBTC’s wireline infrastructure. The initial investment for BBTC’s satellite solution was [REDACTED], and the total annual expense was [REDACTED] in 2011.<sup>14</sup> These customers are connected to the same switching systems as the remainder of BBTC’s customers and have access to unlimited local calling, custom calling features, broadband services and access to local 911 networks.

<sup>12</sup> See Texas Admin. Code § 26.54.

<sup>13</sup> These remote customers were previously served with Basic Exchange Telephone Radio Service (“BETRS”) technology, which does not meet the Texas PUC COLR requirements.

<sup>14</sup> [REDACTED]

This satellite loop solution has served BBTC's customers well and enabled BBTC to satisfy its Texas COLR obligations using the least-cost technological solution at the time. Recently, BBTC began migrating its remote customers to an even lower cost solution that employs the Motorola Canopy® radio. The Motorola Canopy® system is a fixed wireless access solution that provides a wireless Ethernet connection to transport voice, video and data. The system is flexible and can support both line-of-sight and non-line of sight point-to-point links as well as point-to-multipoint links. With this flexibility, BBTC believes that this technology can be configured to meet the current and future needs of many of its business and residential customers throughout its territory.<sup>15</sup> The Canopy® system is fed by a fiber-connected tower or linked by an Exalt Ethernet backhaul radio to a fiber-connected tower. BBTC is in the process of installing Motorola Canopy® on its [REDACTED] existing mountain top sites with an additional [REDACTED] repeaters to transition most of BBTC's existing satellite segment customers to the new lower-cost technology.<sup>16</sup> The migration will not only lower costs but allow BBTC to provide higher bandwidth, lower overall system latency, and speeds sufficient to meet the Commission's 4MB down/1MB up benchmark.

BBTC has deployed a cost-effective network to reach its remote customers and meet the demands of consumers and anchor institutions within its territory. Indeed, unlike most LECs,

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<sup>15</sup> Currently, BBTC has begun to deploy a last mile point to multipoint solution that can reach end users [REDACTED]

<sup>16</sup> The existing tower sites were the remaining BETRS tower sites within BBTC's service area. As shown on BBTC's network map, attached as Exhibit 1, although the Canopy® solution will serve most of its [REDACTED] remote customers, this solution cannot reach all of these customers. As a result, BBTC must continue to provision a satellite solution to serve some of its most remote customers.



BBTC has grown its access lines by approximately 27 percent since 1997. Despite this, BBTC estimates that the anticipated reduction in its USF support due to the FCC's new rules will cause the Company to default on its loans by 2013 and run out of cash by January 2016. Given this and the lack of alternative terrestrial providers in the area, absent a waiver, all consumers in the BBTC service area will be at risk of losing access to terrestrial voice and broadband services.

The *USF Transformation Order* requests the following information in support of a petition for waiver.<sup>17</sup>

**A. Density Characteristics**

BBTC's service area covers 17,593 square miles, making it larger than the state of Massachusetts.<sup>18</sup> BBTC's service area includes 15,716 road miles. Within that territory, BBTC serves approximately [REDACTED] access lines—or 0.3 lines per square mile. Approximately [REDACTED] customers or access lines are in the only incorporated town in BBTC's territory, Presidio, which has a population of 4,500. The remainder of BBTC's customers live throughout the territory, so much of BBTC's territory has, at best, 0.2 customers per square mile. BBTC's total company federal annual support amount per loop is [REDACTED]. But to meet its Texas COLR obligations, even using cost-efficient satellite and radio solutions, the Company's average interstate revenue requirement per loop is [REDACTED] to reach [REDACTED] of its most remote customers, who have no alternatives to meet their communications needs.

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<sup>17</sup> *USF Transformation Order*, ¶ 542.

<sup>18</sup> BBTC's territory is also larger than Connecticut, Delaware, Hawaii, Maryland, New Hampshire, New Jersey, Rhode Island, and Vermont.

BBTC's high costs are driven not just by low density, but by mountainous and desert terrain in its service area, which substantially increases the cost of building and maintaining telecommunications facilities. For instance, BBTC's service territory contains five separate mountain ranges, with fifteen mountains that exceed 5,000 feet elevation along with numerous others with a vertical rise exceeding 4,000 feet that are high enough to interfere with line-of-sight fixed wireless solutions. In addition to mountains, the Trans-Pecos region is characterized by desert valleys, sand hills, rough plateaus, and desert brush land.

These geographic challenges lead not only to higher build out costs, but higher ongoing maintenance costs as well. For example, reaching BBTC's [REDACTED] mountain top tower sites and [REDACTED] repeater sites requires additional expense beyond the required annual expense of normal maintenance. Additionally, inclement weather, such as ice, lightning storms, or rain is common and can easily result in obstructed and damaged roads, which adds thousands of dollars in order to access and maintain facilities. Extreme weather is also common in BBTC's service area: Thunderstorms generating heavy rainfall often result in flash floods that can render the many miles of dirt roads leading to BBTC's equipment and customers inaccessible. Repairing and clearing roads after such extreme events cost the company approximately [REDACTED] in 2010. Additionally, one local electric utility, Rio Grande Electric Cooperative, restricts maintenance and repairs to easily accessible power facilities leaving BBTC to maintain power to its own equipment. As a result, BBTC must provision backup power for its tower and repeater sites using propane and alternative power. Because commercial propane vendors' delivery trucks cannot access many of these remote sites, BBTC must handle these deliveries itself.

BBTC also faces infrastructure challenges due to its remote location. For example, only 12 percent of the road miles within the BBTC study area are paved, leaving 13,830 miles of unsurfaced roads. The expanse of BBTC's territory means that the company's vehicles must cover long distances over mostly unsurfaced roads. In 2011, BBTC's vehicles and heavy equipment clocked 900,411 miles, averaging 27,388 miles per vehicle, with five service trucks clocking more than 40,000 miles each.

**B. Alternative Providers**

The few alternative terrestrial voice and broadband providers that serve portions of BBTC's territory—including AT&T Mobility, Verizon Wireless and Mountain Zone TV Systems—rely on BBTC's plant for backhaul and middle mile services.

*Terrestrial Voice Telephony Service.* BBTC is the only provider of terrestrial voice telephony service that serves its entire territory. There are no competitive local exchange carriers ("LECs"). The only other providers are mobile wireless carriers. AT&T Mobility and Verizon Wireless operate a combined [REDACTED] cellular towers in the area—primarily in the town of Presidio and along major roads. All [REDACTED] towers rely on BBTC for backhaul services. BBTC estimates that under ideal conditions with no line of sight issues—which due to the terrain many of these towers have—cellular coverage does not cover more than [REDACTED] percent of the service area.<sup>19</sup>

*Broadband Service.* Competitive broadband offerings in BBTC's service territory are few and far between. Verizon Wireless has limited 3G service in some areas, and AT&T offers

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<sup>19</sup> BBTC has prepared the attached map showing its estimate of wireless coverage based on these tower locations and assuming ideal conditions. See Exhibit 2.



its EDGE network services in some areas, with advertised speeds of 75 to 136 kbps.

Additionally, many cellular tower sites limit data transmission. There is one cable company, Mountain Zone TV Systems, that offers broadband service in the town of Presidio with an advertised speed of up to 3MB.<sup>20</sup> However, Mountain Zone TV does not offer voice service; and, like the wireless carriers, Mountain Zone TV Systems also relies on BBTC for middle mile services.

*Non-terrestrial Service.* While not a consideration for the Commission's waiver process, BBTC notes that there is no alternative satellite service that meets federal and state requirements of voice telephony and broadband service in BBTC's sparsely populated territory.<sup>21</sup> Thus, BBTC's network is unique in that it provides the only viable means of communications, without which residents would lose access to the world.

### **C. Accounting of Unused or Spare Equipment**

Unused or spare equipment or facilities are booked to Part 32 Account 2410, Cable & Wire Facilities. BBTC follows the National Exchange Carrier Association's ("NECA") interpretation of Section 36.153 of the FCC's rules, 47 C.F.R. § 36.153, in the apportionment of spare facilities.<sup>22</sup> Based on this interpretation, BBTC assigns spare facilities to the following

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<sup>20</sup> Mountain Zone TV Systems does not offer voice services.

<sup>21</sup> See *USF/ICC Transformation Order*, Section VI & Texas Admin. Code § 26.54.

<sup>22</sup> NECA's Cost Guideline titled "Spare Fiber C&WF Investment" states "the spare portion of any facility, including fiber, is categorized in the same manner as the in-use portion of the same section of cable. If the spare facility is part of an existing "in use" cable facility, the spare capacity/facilities would get categorized in the same proportion of "in use" categorization (or directly assigned if the entire facility is assignable to one category)." Furthermore, the guideline states that "the FCC's rules also acknowledge that certain C&WF investment that is 'reserved' can be categorized based on an analysis of company records. To the extent that supportable

categories: Category 1-Exchange Line, Category 2-Wideband and Exchange Trunk, Category 3-Interexchange, Category 4-Host/Remote Message. BBTC's accounting for its spare and unused equipment is provided in detail in the attached Exhibit 3.

**D. Corporate Operations**

BBTC's total corporate operations expense for 2011 were [REDACTED]. This expense is broken down in detail by category in the appended Exhibit 4. There is no allocation of expenses from affiliates including from BBTC's holding company to BBTC. BBTC has a total of [REDACTED] employees, [REDACTED] of whom charge time to corporate operations. These employees have multiple duties to which time is charged. As such, the total number of hours charged to corporate operations is [REDACTED]. The corporate operations portion of salaries paid to the [REDACTED] employees that charge time to corporate operations is [REDACTED].

**E. End User Rate Plans**

BBTC or its nonregulated affiliate, Big Bend Telecom, as noted below, currently offer the following rate plans.

**Residential Local Voice Services:**

- Standard Residential Service: BBTC provides local exchange service in its service area as specified by the Company's exchange service area maps approved and on file with the Texas Public Utilities Commission. This rate plan fulfills BBTC's Texas COLR

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documentation consistent with the FCC's rules (*e.g.*, cable engineering and assignment records) identifying the facilities 'kept or set apart for a specific use' is provided, companies have the ability to separately assign the cost of reserved cable to the various C&WF categories within the boundaries of the FCC's rules."

obligation. Standard residential service for a local exchange access line is available at a rate of \$8.50/month. This includes tone dialing and a directory listing.

- Amistad Plan: The Amistad Plan is available to residential customers at a monthly rate of \$17.95/month. This plan includes two residential local exchange access lines, tone dialing, primary and secondary directory listings and each line includes caller ID name and number delivery, call waiting, cancel call waiting, call waiting ID, three way calling, and call forwarding.

#### **Long Distance Services:**

- IntraLATA Long Distance (Carrier - BBTC): Two optional calling plans are available to residential customers for intrastate intraLATA toll charges.<sup>23</sup>
  - Option A: The basic monthly rate is \$3.00 and a 15% discount on all qualified usage
  - Option B: The basic monthly rate is \$9.60 for one hour of qualified usage. Additional hours of qualified usage are \$9.00 per hour prorated on a per minute basis.
- Long Distance (Carrier - Big Bend Telecom – non-regulated affiliate): Big Bend Telecom offers long distance service for a monthly recurring charge of \$4.95 and \$0.07/minute on domestic calls. International rates vary based on termination. No unlimited plan is offered currently.

#### **Business Voice Services:**

- Standard Business Service: BBTC provides local exchange service in its service area as specified by the Company's exchange service area maps approved and on file with the Texas Public Utilities Commission. This rate plan fulfills BBTC's Texas COLR obligation. Standard Business service for a local exchange access line is available at a rate of \$17.00/month. This includes tone dialing and a directory listing.
- Standard PBX Trunk Service: BBTC provides PBX (or Rotary group) service in its service area as specified by the Company's exchange service area maps approved and on file with the Texas Public Utilities Commission. This rate plan fulfills BBTC's Texas

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<sup>23</sup> In the state of Texas, as the regulated entity, BBTC may offer long distance services in the intraLATA jurisdiction at \$.20 per minute. As such, to provide competitively priced long distance services, the Company offers long distance services through its nonregulated affiliate, Big Bend Telecom as well.



COLR obligation. Standard PBX Trunk Service is available at a rate of \$25.50/month. This includes tone dialing and a directory listing.

**Broadband Services:**

- Internet Service: Internet service is provided by Big Bend Telecom using various technologies. There is no difference in price for residential and business customers. There are 4 plans available and all include the following: 5 email accounts, virus filtering, security suite, webmail, video chat, Google sites, Google documents, News Groups access, My Support application, and 24/7 Help Desk. Static IP is available for \$10/month and Static IP29 for \$25/month. A monthly \$10 discount is available to qualified end users where multiple access lines reside at a common location.
  - 1.5 Mbps ADSL: \$29.95/month (bandwidth download/upload –up to 1.5/384K), \$25 one-time provisioning fee, fee waived with one-year contract.
  - 3.0 Mbps ADSL: \$44.95/month ( bandwidth download/upload – up to 3.0/768k) The monthly rate decrease to \$34.95 with a 12 month term agreement, \$25 one-time provisioning fee, fee waived with one-year contract.
- Internet Services in Price Cap Exchanges Outside of BBTC's Service Territory: In AT&T's exchanges that border BBTC's service territory in Alpine, Texas, Big Bend Telecom offers a competitive Internet access service through fixed wireless technology.
  - 3.0 Mbps Fixed Wireless: \$34.95 (bandwidth download/upload –up to 3.0/768K) \$150.00 one-time provisioning fee, provisioning fee waived with one-year contract.
  - 6.0 Mbps Fixed Wireless: \$59.95 (bandwidth download/upload –up to 6.0/1Mbps), \$150.00 provisioning fee, provisioning fee waived with one-year contract.
  - 12.0 Mbps Fixed Wireless: \$64.95 (bandwidth download/upload –up to 12.0 Mbps/1Mbps), \$150.00 provisioning fee waived with one-year contract.

BBTC has begun the process of securing approval from the Texas Public Utilities Commission to increase local rates and expects to make its rate filing by the end of the February 2012. The Company anticipates being able to meet the HCLS initial rate floor of \$10 by the effective date

of Section 54.318.<sup>24</sup> BBTC does not offer any tariffed bundles including regulated and unregulated services at this time.

**F. List of Services Other Than Voice Services Provided Over the USF Supported Plant**

*Digital Subscriber Line("DSL") Service.* BBTC offers DSL services to its residential and business customers. Approximately [REDACTED] percent of BBTC's voice customers subscribe to its broadband DSL services.

*Special Access.* BBTC provides [REDACTED] dedicated special access circuits to anchor institutions, border security institutions, health care facilities, oil and gas companies, power companies, and wind energy companies. Of note, BBTC or Big Bend Telecom provide Ethernet Transport Service to customers both inside and outside the BBTC study area using the Company's facilities in partnership with the statewide Texas Lone Star Network.

*Multichannel Video Service.* Multichannel video service is not offered and is not a viable option for BBTC. Many customers in the area use satellite companies like DISH and DirecTV for video programming. In addition, BBTC does not have the funding to invest in obtaining programming rights. Furthermore, based on the socioeconomic factors of the area, BBTC does not believe that it could recover its costs for video service in its service area.

**G. Customers Served**

As of the end of 2011, BBTC served [REDACTED] access lines—[REDACTED] residential lines and [REDACTED] business lines. BBTC serves [REDACTED] broadband customers within its regulated territory,

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<sup>24</sup> See USF Transformation Order, Appendix A.

and Big Bend Telecom services approximately [REDACTED] broadband customers outside BBTC's territory. In addition to its residential and business customers, BBTC serves the following anchor institutions and border security institutions:

**Anchor Institutions Served:**

Comstock Independent School District ("ISD")	McCamey ISD
Terrell County ISD	Crane ISD
Big Bend National Park San Vicente CSD	Valentine ISD
Terlingua ISD	University of Texas McDonald Observatory
Alpine ISD	Texas Region 18 Education Service Center
Fort Davis ISD	Sul Ross State University
Presidio ISD	Midland College
Marathon ISD	Banks and Credit Unions
Marfa ISD	Public Libraries – 8
Fort Stockton ISD	Hospitals and Health Clinics – 6
Iraan Sheffield ISD	Public Housing Authorities

**Law Enforcement and Homeland Security Entities Served with High Capacity Circuits, Broadband and Voice Services:**

Department Homeland Security (DHS) Highway Check Points – 4  
DHS International Border Crossings – 2  
DHS Port of Entry – 2  
DHS Administrative Facilities – 7  
DHS Housing Facilities – 3  
Department of Immigration, Customs and Enforcement  
Department of Defense – Air Force Radar Surveillance Balloon Site  
Department of the Interior – Big Bend National Park  
Federal Aviation Administration  
Federal Motor Carrier Safety Administration  
U. S. Weather Service  
Texas Department of Public Safety including Highway Patrol and Texas Rangers  
Texas Department of Corrections – Lynaugh Unit, Sheffield Detention Center  
Texas Department of Parks and Wildlife including Game Wardens  
Texas Department of Transportation  
County Judges, County Administration, Fire Departments, Sheriffs' Departments and Police  
Departments of Brewster, Presidio, Terrell, Jeff Davis, Pecos, Pecos, Crane, and Val Verde  
counties  
911 Facilities

**H. Procedures for Allocating Shared or Common Costs Between Regulated and Nonregulated Services or Operations**

BBTC's cost allocation procedures are provided in the appended Cost Allocation Manual, which has been approved by the Texas Public Utilities Commission.<sup>25</sup> BBTC's nonregulated affiliate, Big Bend Telecom, does not have employees. Therefore, to account for employee time and overhead spent on nonregulated operations, BBTC uses a functional time reporting system with function codes created for all activities, including nonregulated activities performed by BBTC employees. Any time spent on tasks associated with the nonregulated affiliate is directly assigned through the use of the payroll system to nonregulated accounts. The overhead spreads of benefits, supervision, IT support, etc. are allocated to these nonregulated accounts as well as the regulated accounts thus ensuring that consistent overhead loadings are removed from the regulated cost base for cost study purposes. Nonregulated invoices are directly assigned to the nonregulated affiliate and not included in the regulated cost base for cost study purposes.

**I. Audited Financial Statements**

The audited financial statements of BBTC and its holding company, Nevill Holdings, for 2007-2010 are attached as Exhibit 6.

**J. Information Regarding Outstanding Loans**

BBTC and Nevill Holdings have several outstanding loans. Its senior loans with CoBank were in place on January 1, 2006. These loans refinanced debt the Company has held with the Department of Agriculture's Rural Utilities Service ("RUS") beginning in 1991, which stem

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<sup>25</sup> The Cost Allocation Manual is attached as Exhibit 5.



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**[REDACTED]**

[REDACTED]

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[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

**K. Five-Year Pro Forma Financial Analysis of the New USF Rules' Impact on BBTC**

BBTC conducted a financial analysis of the projected impact of the FCC's new USF rules. Five-year pro forma financial statements for BBTC, Big Bend Telecom and Nevill Holdings are attached as Exhibit 7.

BBTC estimates that it will lose approximately [REDACTED] per year in HCLS and ICLS funding due to the new corporate cap limitation.<sup>26</sup> In addition, BBTC anticipates that it will lose approximately [REDACTED] per year as a result of the caps generated on HCLS support by the regression analysis. These losses taken together with additional losses resulting from the remainder of the FCC's initiatives, including intercarrier compensation reform, mean that BBTC will lose capacity to cover operational expenditures. Consequently, BBTC's rate base will be substantially reduced, which will ultimately frustrate the Commission's objective "to ensure that

<sup>26</sup> BBTC's corporate expenses have already been limited by approximately [REDACTED] per year due to the Commission's initial corporate cap limitation on HCLS. The [REDACTED] figure represents additional costs that BBTC cannot recover under the Commission's revised corporate cap formula and its application of the limitation to ICLS under Section 36.621. *USF Transformation Order*, Appendix A.

robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation.”<sup>27</sup> Even assuming that BBTC and its nonregulated affiliate continue to maintain limited capital expenditures to extend broadband services, the resulting reduction in rate base is anticipated to be approximately [REDACTED].<sup>28</sup>

**L. Identification of the Specific Facilities That Will Be Taken Out of Service**

Because a primary driver of BBTC’s revenue loss is the anticipated implementation of the regression analysis, which generates caps on the recovery for investments BBTC has already made and for which it still is under contract to make payments on, taking existing facilities out of

<sup>27</sup> See *USF Transformation Order*, ¶ 1.

<sup>28</sup> BBTC defined rate base in the financial model as “net plant.” [REDACTED]

<sup>29</sup> See also Letter from Lennie Blakeslee, Vice President, CoBank to Justin Haynes, Big Bend Telephone Company (Feb. 2, 2012), appended as Exhibit 8.

service will not avoid these obligations.<sup>30</sup> BBTC would be forced to seek decertification of its ETC status for its territory.

### III. A WAIVER OF THE COMMISSION'S NEW USF RULES IS WARRANTED

To serve the public interest, the Commission should waive three of its USF rules as applied to BBTC: (i) its \$250 per line monthly cap on HCLS;<sup>31</sup> (ii) its updated and extended limits on recovery of corporate operations expenses applied to HCLS and ICLS;<sup>32</sup> and (iii) its planned application of a regression analysis to limit reimbursable capital and operating expenses for HCLS.<sup>33</sup> The Commission may waive its rules for good cause shown.<sup>34</sup> The Commission may exercise its discretion to waive a rule when the particular facts make strict compliance inconsistent with the public interest.<sup>35</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an

<sup>30</sup> [REDACTED]

<sup>31</sup> *USF Transformation Order*, Appendix A, Section 54.302.

<sup>32</sup> *Id.* ¶¶ 227-33, Appendix A, Section 36.621(a)(4).

<sup>33</sup> *Id.* ¶¶ 210-26.

<sup>34</sup> 47 C.F.R. § 1.3.

<sup>35</sup> The Commission has considerable discretion as to whether to waive its rules. *See Office of Communication of United Church of Christ v. FCC*, 911 F.2d 803, 812 (D.C. Cir. 1990) (upholding the Commission's grant of a waiver "[g]iven the deference due the agency in matters of this sort"); *City of Angels Broadcasting, Inc. v. FCC*, 745 F.2d 656, 663 (D.C. Cir. 1984) (noting that the scope of review of a waiver determination by the Commission "is narrow and constrained"). As the D.C. Circuit has observed, the Commission's waiver determinations are entitled to heightened deference because "the agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety-value procedure for consideration of an application for exemption based on special circumstances." *AT&T Wireless Services, Inc. v. AT&T*, 270 F.3d 959, 965 (D.C. Cir. 2001) (internal quotation marks omitted).

individual basis.<sup>36</sup> In short, a waiver is justified when special circumstances warrant a deviation from general rules and such deviation will serve the public interest.<sup>37</sup>

Such circumstances exist here. *First*, without a waiver, consumers and critical anchor institutions—including national security institutions—would be at risk of losing access to reliable terrestrial and voice and broadband services. Apart from its own services, BBTC provides backhaul services for all the competing providers in its territory, which also would be in jeopardy absent a waiver. *Second*, the Commission's \$250 per line monthly cap is too low given the extraordinarily high costs that BBTC faces. *Third*, the FCC's proposed regression analysis is flawed as applied to BBTC and would not provide sufficient support to meet the Commission's universal service goals. And *fourth*, a waiver would not undermine the Commission's USF reform objectives because despite the unique challenges of serving an exceptionally remote and economically challenged area, BBTC has already taken measures to reduce its costs, and unlike most wireline carriers, has consistently grown its customer base—adding 27 percent more lines since 1997.

**A. Allowing Consumers and National Security Institutions To Lose Access to Terrestrial Voice Services Disserves the Public Interest.**

Absent a waiver, consumers and anchor institutions, including those tasked with securing the nation's border, would be at risk of losing access to terrestrial voice and broadband services. As noted above in Section II. B., BBTC is the only terrestrial voice and broadband provider that

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<sup>36</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>37</sup> *Northeast Cellular*, 897 F.2d at 1166; *see also Allband Communications Cooperative, Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules*, WC Docket No. 05-174, *Order*, 2005 FCC LEXIS 4527 (Aug. 11, 2005).



covers its entire territory. Its only competitors for terrestrial voice telephony service are wireless providers that offer limited coverage, mainly along major roads and in the town of Presidio. Furthermore, these wireless providers rely on BBTC for critical backhaul services in all [REDACTED] cellular towers located in BBTC's territory. Consumers living outside of reliable wireless signal range must rely entirely on BBTC for terrestrial voice services. Similarly, broadband services outside of BBTC's offering are very limited. Wireless providers only offer limited data services in the area, and the single cable company in the service area only offers broadband in the town of Presidio.<sup>38</sup> And satellite service in BBTC's service area experiences coverage limitations and capacity limits that are not likely to be resolved in the near term. For example, the new ViaSat satellite scheduled to become operational this year will not cover the BBTC study area with its improved signal coverage, and further, ViaSat is seeking reconsideration of the Commission's urban capacity limits because, presumably, these would be difficult—if not impossible—to meet using satellite service.<sup>39</sup> Thus, satellite service for voice telephony and broadband access in BBTC's area is currently not an option consistent with the Commission's policy objectives.

Additionally, because BBTC's service territory includes 25 percent of the U.S. land border with Mexico, many federal, state and local national border security and public safety institutions rely on BBTC's services. BBTC provides voice services, high speed broadband, high capacity circuits, and Ethernet Transport service to the U.S. Border Patrol, U.S. Customs, the Department of Justice, the U.S. Air Force, the Department of Immigration, Customs, and

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<sup>38</sup> See *supra* Section II.B.

<sup>39</sup> See ViaSat, Inc., Petition for Reconsideration, WC Docket No. 10-90 (filed Dec. 29, 2011).

Enforcement, the Federal Aviation Administration, the Federal Motor Carrier Safety Administration, the Department of Homeland Security, the Department of the Interior, the U.S. Weather Service, the Texas Department of Public Safety, the Texas Department of Transportation, the Texas Department of Parks and Wildlife, and local sheriff's offices and 911 facilities. BBTC's services are used for a wide range of purposes, including in Presidio and Boquillas, U.S. Ports of Entry, at Border Patrol check point stations and office locations. BBTC also provides service for the U.S. Air Force's radar balloon installation, in unmanned aerial vehicles or drones, and at local sheriff's departments radio repeater sites.

Despite the fact that BBTC provides these critical voice and data services, as demonstrated in BBTC's financial projections, attached as Exhibit 7, as early as next year, the Commission's new USF rules will cause BBTC to default on its loans. As a consequence, BBTC will immediately need to limit capital expenditures on the upkeep and maintenance of its networks, which will in turn immediately impact BBTC's current customers. Moreover, by January 2016 the Company will be out of cash and will not be able to continue to provide these critical services absent a waiver.

**B. The FCC's Rules Do Not Account for BBTC's Unique Challenges and Would Not Ensure that Sufficient Support is Provided.**

As an initial matter, the Commission's \$250 per line per monthly cap would not provide sufficient support given the very high costs that BBTC faces. BBTC's territory is sparsely populated with just 0.3 customers per square mile. Apart from the typical costs of serving a low-density area, the sheer size of BBTC's territory—17,593 square miles—drives up costs. For example, completing routine trouble calls, service orders, field checks and reactive maintenance

within the Texas Public Utility Commission's required timeframes requires BBTC's technicians to traverse hundreds of square miles on a daily basis. In 2011, BBTC technicians responded to [REDACTED] service requests. And because BBTC covers such a large area, it must respond to a large number of cable locate requests that is disproportionate to the Company's size. In 2011 alone, BBTC technicians responded to more than [REDACTED] cable locate requests. These "One Call" cable locates also have a required response time and must be completed in a very timely manner to prevent damage to the core infrastructure. The high number of cable locates is driven by a combination of factors, including frequent damage to water lines that run under dirt roads, frequent maintenance to energy sector lines, and the reconstruction of fence lines after devastating wildfires in the area.

BBTC's costs are also driven by the rugged mountainous and rocky terrain that dominates its territory. Mountainous terrain drives up both construction and maintenance costs and excludes certain less expensive network solutions that may be cost-effective in other low-density areas such as line-of-sight fixed wireless links. And the soil type in much of the territory is solid rock, which drives up the costs of burying plant and constructing wireless infrastructure tremendously. Even where BBTC has been able to utilize a more cost-effective wireless solution, deploying wireless facilities requires the Company to construct poles for repeaters and subscriber equipment on rock, adding time and expense—drilling through solid rock to construct poles often takes multiple days. Also, because of the difficulties of burying any infrastructure in this terrain, in areas with existing energy-related infrastructure, such as pipelines for oil and gas, additional expense is required to follow joint use rules, including digging deeper ditches, using heavier equipment, and more bores.

Apart from terrain costs, BBTC faces unique costs due to its location on the border. Because BBTC serves numerous federal and state border institutions, the Company must build an additional level of reliability and redundancy into its network that may not be a priority for other carriers that face similar density and terrain challenges. Due to the number of high profile special access circuits that BBTC provides to homeland security users, BBTC's technicians must be trained to respond to any degradation in service to the Company's customers and prioritize the restoration process according to FCC's established Telecommunications Service Priority user program. Also, because the denser parts of BBTC's service area are socioeconomically-challenged, BBTC's ability to raise rates or obtain customers for its nonregulated services to compensate for its higher costs is constrained.

Additionally, because BBTC faces these unique circumstances, the Commission's proposed regression methodology—intended to generate caps based on the costs of “similarly situated” providers—is flawed for several reasons.<sup>40</sup> First, the regression model accounts for a limited set of independent variables that do not capture significant drivers of BBTC's costs.<sup>41</sup> For example, the regression model includes a series of independent variables that essentially quantify population density: land area, census blocks, and the number of housing units in non-urbanized areas, urban clusters and urban areas.<sup>42</sup> The only variable that does attempt to quantify the cost impact of terrain is the percent water variable. Because variables such as elevation and soil type—which are substantial drivers of BBTC's costs in addition to low

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<sup>40</sup> See *USF Transformation Order* ¶ 217.

<sup>41</sup> See *id.*, Appendix H.

<sup>42</sup> See *id.* Appendix H, Table 1.





Given BBTC's unique situation, a \$250 cap is insufficient to cover its high costs, and a regression model that compares a carrier to "similarly situated" carriers, even with revisions, will not properly estimate the Company's costs.

**C. A Waiver Would Not Undermine the Commission's Objectives.**

A waiver of the three specified USF rules as applied to BBTC would not undermine the Commission's objectives. The Commission made clear that its reforms were intended "to eliminate waste and inefficiency and improve incentives for rational investment and operation by rate-of-return LECs."<sup>43</sup> In addition, the Commission is concerned about subsidizing service where competition for such services exist.<sup>44</sup> This plainly is not that case. BBTC has already taken measures to provide services in a manner that was cost-effective despite its high costs. For example, BBTC invested [REDACTED] [REDACTED]. And BBTC is looking to reduce these cost even further by transitioning its satellite customers to Motorola Canopy®, saving an estimated [REDACTED] per year.

Additionally, compared to other carriers of similar size, BBTC is leanly staffed: An industry report comparing BBTC to 221 carriers with 5,000 to 14,999 access lines shows that BBTC is at the lowest end in terms of access lines per square mile but near the median for access

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<sup>43</sup> *USF Transformation Order*, ¶ 195.

<sup>44</sup> *Connect America Fund*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, ¶ 171 (2011).

lines per employee.<sup>45</sup> BBTC has employed few resources given the size of the territory served. As such, BBTC technicians must spend most of their time on reactive network maintenance rather than preventative maintenance activities. And the Company maintains efficiency by ensuring that its outside plant personnel are capable of handling any outage or disruption of service including TSP prioritization, rather than retaining technicians that specialize in one area. Whether it is a fiber cable cut or circuit equipment failure, all BBTC outside plant personnel are equipped to respond to all service disruptions, allowing the Company to maintain an efficient staff. BBTC cut employee benefits by approximately [REDACTED] to further cut costs, confirming that the Company has already taken steps to remain efficient in light of the high cost area that it serves. A waiver, therefore, would be consistent with the Commission's overall objectives for USF reform.

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<sup>45</sup> See Telergee Alliance, Telergee Benchmarking Study, Scorecard 2010. A copy of the Telergee Scorecard is appended as Exhibit 10.

#### IV. CONCLUSION

For the foregoing reasons, the Commission should waive (i) its \$250 per line monthly cap on HCLS;<sup>46</sup> (ii) its updated and extended limits on recovery of corporate operations expenses applied to HCLS and ICLS;<sup>47</sup> and (iii) its planned application of a regression analysis to limit reimbursable capital and operating expenses for HCLS.<sup>48</sup>

Respectfully submitted,

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February 6, 2012

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<sup>46</sup> *USF Transformation Order*, Appendix A, Section 54.302.

<sup>47</sup> *Id.* ¶¶ 227-33, Appendix A, Section 36.621(a)(4).

<sup>48</sup> *Id.* ¶¶ 210-26.

**REDACTED—FOR PUBLIC INSPECTION**

**Exhibit 1**

**BBTC Network Map**

**[1 page]**

**REDACTED—FOR PUBLIC INSPECTION**

**Exhibit 2**

**Estimated Cellular Coverage in BBTC Territory**

**[1 page]**

**REDACTED—FOR PUBLIC INSPECTION**

**Exhibit 3**

**Accounting of Spare Equipment**

**[1 page]**

**REDACTED—FOR PUBLIC INSPECTION**

**Exhibit 4**

**Corporate Operations Expense**

**[1 page]**



**REDACTED—FOR PUBLIC INSPECTION**

**Exhibit 5**

**Cost Allocation Manual**

**[24 pages]**

**REDACTED—FOR PUBLIC INSPECTION**

**Exhibit 6**

**Audited Financial Statements**

**[119 pages]**

**REDACTED—FOR PUBLIC INSPECTION**

**Exhibit 7**

**Five-Year Pro Forma Financial Analysis**

**[14 pages]**

**REDACTED—FOR PUBLIC INSPECTION**

**Exhibit 8**

**CoBank Letter**

**[1 page]**

**REDACTED—FOR PUBLIC INSPECTION**

**Exhibit 9**

**Regression Impact Analysis**

**[2 pages]**

**REDACTED—FOR PUBLIC INSPECTION**

**Exhibit 10**

**Telergée Industry Scorecard**

**[8 pages]**